

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

**PIEPER, INC.
3635 190TH STREET
WEVER, IA 52658**

**ADMINISTRATIVE
CONSENT ORDER
2008-AQ- 39**

**TO: MICHAEL BLASER
666 GRAND AVE., SUITE 200
DES MOINES, IA 50309**

I. SUMMARY

The Iowa Department of Natural Resources (Department) and Pieper, Inc. hereby agree to the following Administrative Consent Order (Order). Pieper, Inc. agrees to cease and desist from illegal and unauthorized open burning in the future, as well as to pay an administrative penalty of \$5,000 – with \$3,750 going to the Lee County Conservation Board as part of a Supplemental Environmental Project and \$1,250 paid to the order of the Iowa Department of Natural Resources. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Jim Sievers
Iowa Dept. of Natural Resources, FO#6
1004 W. Madison
Washington, IA 50319
Ph: 319-653-2135

Relating to legal requirements:

Tamara Mullen, Attorney
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-8934

II. JURISDICTION

The parties hereby agree that this Order is issued pursuant to Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division II (air quality) and the rules promulgated pursuant to that part; and Iowa Code section 455B.109 and Department rules in Chapter 567 Iowa Administrative Code (I.A.C.)10, which authorize the Director to assess administrative penalties up to \$10,000.

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III. STATEMENT OF FACTS

The Department and Pieper, Inc., hereby agree to the following statement of facts:

1. Pieper, Inc. is an Iowa corporation which owns properties in Lee County, Iowa, including property with a street address of 3638 190th Street, Wever, Iowa 52658.
2. Pieper, Inc.'s home office is located at 3635 190th Street, Wever, Iowa 52658 according to the Iowa Secretary of State's corporation filings.
3. On September 20, 2007, FO#6 received an anonymous complaint (# 9/07-26) that Pieper, Inc. was taking wood from the old North Hill School located on the corner of 8th and Spring Street in Burlington, IA, and bringing it back to Pieper, Inc.'s property at 3638 190th Street and burning it.
4. FO#6 investigated the complaint on September 24, 2007, and issued a NOV to Pieper, Inc. on September 27, 2007 for the open burning of trade waste (wood), miscellaneous farm waste, tire(s), and metal.
5. The September 27, 2007 NOV stated that the case would be referred to the Department's Legal Services Bureau, and the referral was drafted in October 2007.

IV. CONCLUSIONS OF LAW

The parties hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code section 455B.133 provides that the Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 I.A.C. 20 through 34 relating to air quality.
2. 567 I.A.C. 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 567 I.A.C. 23.2(2) (variances) and 23.2(3) (exemptions).

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3. At no time did Pieper, Inc. seek, nor was it ever granted, a variance to burn trade waste, farm waste, tires, and metal pursuant to 567 I.A.C. 23.2(2).
4. Nor do the materials in this case qualify as being exempt under 567 I.A.C. 23.2(3) as trade waste (wood), miscellaneous farm waste, tires, and metal do not fall within any of the enumerated categories.

V. ORDER

THEREFORE, the Department hereby orders and Pieper, Inc. agrees to the following:

1. Pieper, Inc. shall cease and desist from any future open burning unless Pieper, Inc. obtains a variance from the Department pursuant to 567 I.A.C. 23.2(2) or the materials are exempt from the open burning prohibition under 567 I.A.C. 23.2(3).
2. Pieper, Inc. shall pay an administrative penalty of \$5,000, 75% of which (\$3,750) shall be paid directly to the Lee County Conservation Board as part of a Supplemental Environmental Project (SEP), with the remaining 25% (\$1,250) paid to the order of the Iowa Department of Natural Resources. Both of these payments shall be made 60 days after issuance of this Order. Pieper, Inc. shall provide proof of payment to the Lee County Conservation Board to the Department within this same 60 day window. Finally, should Pieper, Inc. fail to complete its SEP on time, it agrees to pay the full \$5,000 to the Department as an administrative penalty.

VI. PENALTY

1. Iowa Code 455B.146 authorizes the assessment of civil penalties up to \$10,000 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.
2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. See 567 I.A.C. 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of a consent order with a penalty.

ECONOMIC BENEFIT: Pieper, Inc.'s economic benefit for not complying with Department rules is based upon the costs saved by avoiding labor, hauling, and tipping fee costs associated with proper disposal. Additionally, the burning of solid waste generally reduces the volume of that waste by more than 50%, decreasing disposal costs proportionally. Therefore, \$2,500 is assessed for this factor.

GRAVITY: The unregulated open burning of solid waste can pose dangers to human health and the environment by releasing toxins and particulates into the air. Additionally,

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tax dollars were expended to investigate, document, and respond to the open burning violations that are the subject of this Order. A penalty of \$1,500 is assessed for this factor.

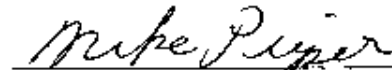
CULPABILITY: Pieper, Inc. does not deny that it was previously aware of the Department's open burning rules and of the fact that tires could not be used to start fires. There is evidence that a tire was burned as part of this fire, but no evidence that the tire was used to start the fire in question. As such, \$1,000 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code sections 455B.138 and 561 I.A.C. 7.5(1), as adopted by reference by 567 I.A.C. chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Pieper, Inc. By signing this Order all rights of Pieper, Inc. to appeal this Order are waived.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146.



MIKE PIEPER, PRESIDENT
PIEPER, INC.

Dated this 11th day of September, 2008



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 26 day of September, 2008

Pieper, Inc.: Field Office 6; Dan Stipe; Dennis Ostwinkle; Jim Sievers; VII.C.1